

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.614-P OF 2022

(Against Order dated 20.04.2022 passed by
the Peshawar High Court, Mingora Bench
(Dar-ul-Qaza), Swat in W.P.No.48-M/2022)

Government of Khyber Pakhtunkhwa through Chief Secretary at Civil
Secretariat, Peshawar and others ...Petitioners

Versus

Shah Faisal Wahab and others ... Respondent

For the Petitioners: Mr. Sultan Mazhar Sher Khan, Addl.AG.KP

For the Respondent: N.R.

Date of Hearing: 03.04.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal has been brought to challenge the Judgment dated 20.04.2022 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in W.P.No.48-M/2022, whereby directions have been issued to the petitioners to adjust the respondent No.1 in the upcoming admissions for the Session 2022-2023 on the basis of the test already conducted and qualified by him.

2. The short-lived facts of the case are that the respondent No.1 is a resident of Sher Khana, Palai, Tehsil Batkhela, District Malakand. The petitioners invited applications in the vernacular newspapers from talented students of KPK from Class 6 to Class 12 to compete for a Free Education Scholarship Programme (“**Scholarship Programme**”). The respondent No.1 applied for the Scholarship Programme and also appeared in the aptitude test on 27.06.2021. According to the gist of

the petition, the respondent No.1, secured 61 marks, which was the highest score in the District. The results were uploaded on the Educational Testing and Evaluation Agency (“**ETEA**”) website, but in the tentative merit list an allegation of interpolation in the Admission and Withdrawal Register (“**AWR**”) was attributed to the respondent No.1 with regard to his date of birth. The respondent No.1 moved an appeal before the concerned authority to clarify and verify the discrepancies and also requested that he be recommended for admission but, instead of deciding his appeal/representation, the Notification No.860-106 dated 15.10.2021 was issued for the admission and allocation of the successful candidates, hence the respondent No.1 approached the Peshawar High Court by means of Writ Petition through his guardian *ad litem*.

3. The learned counsel for the petitioners argued that the original date of birth of the respondent No.1 was 14.10.2010 but it was changed to 14.10.2009 in the AWR in order to render the respondent No.1 eligible to obtain admission in the ETEA Scholarship Programme. Whereas in the advertisement it was a mandatory condition that the age of the student for the entry test must be between eleven (11) to thirteen (13) years. He further argued that the learned High Court could not take cognizance of factual controversies or disputed facts with regard to the age of the respondent No.1 but, despite that, while allowing the petition by dint of the impugned judgment, directions have been issued to the petitioners to adjust the respondent No.1 in the Session 2022-2023 on the basis of the test already cleared by him.

4. Heard the arguments and perused the record. The bone of contention is intertwined with the date of birth of the respondent No.1 without much ado with the fact of securing highest marks in the aptitude test by the respondent No.1 in the District. In the advertisement for inviting applications for the Scholarship Programme, there was a condition that the age limit for appearance in the aptitude test was eleven (11) to thirteen (13) years and the cut-off date of filing applications was 11.05.2021. The candidature of the respondent No.1 was rejected on the ground that his date of birth was not 14.10.2009, while the counsel of the respondent No.1 in the High Court emphatically took the plea that the correct date of birth of the respondent No.1 is 14.10.2009 as mentioned in his school admission

record. In order to resolve the anomaly and perplexity with regard to the actual date of birth, the High Court directed the Headmaster of the Government Primary School, Sher Khana, Palai, District Malakand to appear with the respondent No.1's complete record and also produce the extract from the register of the Government Primary School wherein the date of birth of the students are jotted down at the time of admission. In compliance with these directions, the Headmaster, Government Primary School, Sher Khana, Palai, District Malakand, being respondent No.7 in the Writ Petition, appeared with the complete school admissions record to verify the age of the respondent No.1 and after production of irrefutable documentary evidence, the High Court reached the conclusion that the date of birth of the respondent No.1 is 14.10.2009 which was authenticated and verified by the Headmaster on production of original record/extract from the schools admissions register. Merely directing one of the respondents to produce some documents for verification does not amount to an indulgence to resolve a factual controversy or a disputed question of fact. In order to resolve the issue of date of birth of a minor, the most appropriate authority was the Headmaster of the school who appeared and confirmed the correct date of birth as per the available record.

5. The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on to decide convoluted issues of facts. In the present case, the question of ascertaining correct date of birth of the respondent No.1 did not require any external aid much less any oral evidence, but it was verified through documentary evidence produced by the Headmaster of the School, who was one of the respondents in the Writ Petition. The production of documents and verification by the Headmaster on notice of the High Court cannot be categorized within the realm and sphere of disputed question of facts, which could be examined by the High Court even in writ jurisdiction without recording

any evidence and the High Court is not powerless to undertake an enquiry on the basis of affidavits and admitted documents filed by the parties. There was no serious factual dispute or questions of fact of a complex nature, the determination and/or resolution of which was impossible without recording evidence. No detailed investigation of such magnitude on the question of fact was involved which could not be resolved without elaborate evidence.

6. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned High Court. Consequently, this Civil Petition is dismissed and leave is refused.

Chief Justice

Judge

Islamabad, the
3rd April, 2023
Khalid
Approved for reporting